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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



**U.S. Citizenship
and Immigration
Services**

A3



Date:

Office:



File:



APR 12 2011

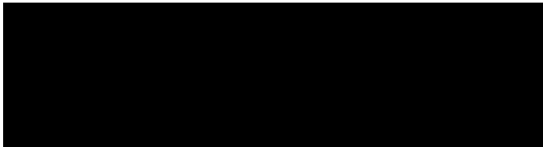
IN RE:

Applicant:



APPLICATION: Application for Status as Permanent Resident Pursuant to Section 13 of the Act of September 11, 1957, 8 U.S.C. § 1255b.

ON BEHALF OF APPLICANT:



INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Perry Rhew

Chief, Administrative Appeals Office

DISCUSSION: The application was denied by the Field Office Director, [REDACTED] and a subsequent appeal was dismissed by the Administrative Appeals Office (AAO). The matter is now before the AAO on a motion to reopen. The motion will be dismissed as untimely filed.

In order to properly file a motion, the regulation at 8 C.F.R. § 103.5(a)(1)(i) provides that the affected party must file the motion within 30 days of service of the unfavorable decision. If the decision was mailed, the motion must be filed within 33 days. See 8 C.F.R. § 103.5a(b). The failure to file before this period expires may be excused at the discretion of the AAO where it is demonstrated that the delay was reasonable and beyond the control of the applicant. 8 C.F.R. § 103.5(a)(1)(i). A motion that does not meet the applicable requirements shall be dismissed. 8 C.F.R. § 103.5(a)(4).

The last decision of the AAO was issued on February 20, 2009. The AAO properly informed the applicant that any motion must be submitted to the office that *originally* decided his case by filing a Form I-290B, Notice of Appeal or Motion, with the correct fee and that any motion must be filed within 30 days of the decision that the motion sought to reopen, as required by 8 C.F.R. 103.5(a)(1)(i). The Form I-290B, Notice of Appeal or Motion, was not properly filed until April 7, 2009, or forty-six days after the AAO decision was issued.

In a March 30, 2009 letter signed by counsel for the petitioner, counsel notes that the instructions for filing a Form I-290B set forth on www.uscis.gov reads: "You must file your appeal or motion with the USCIS office that made the unfavorable decision within 30 calendar days after service of the decision (33 days if your decision was mailed)." Counsel states that as the AAO had made the last unfavorable decision, the motion to reopen was sent to the AAO. Counsel also notes that an untimely filed motion to reopen may still be adjudicated at the discretion of the AAO where the delay in filing is due to a justifiable excuse.

The AAO does not find that counsel's failure to properly file the motion to reopen as directed by the AAO in its February 20, 2009 decision is a reasonable delay beyond the control of the applicant. 8 C.F.R. § 103.5(a)(1)(i). The AAO again refers to its decision dismissing the appeal which states: "All motions must be submitted to the office that *originally* decided your case by filing a Form I-290B, Notice of Appeal or Motion" with the applicable fee. As a matter of discretion, the applicant's failure to file the motion within the period allowed will not be excused as either reasonable or beyond the control of the applicant. Accordingly, the motion will be dismissed as untimely filed.

Of note, even if the AAO accepted counsel's brief and the March 6, 2007 Department of State Country Reports on Human Rights Practices in [REDACTED] submitted on motion, the AAO observes that counsel has not submitted any new relevant and probative evidence establishing that the applicant's actual duties and responsibilities were diplomatic or semi-diplomatic in nature or that there are compelling reasons preventing his return and those of his immediate family members to [REDACTED]. The unsupported statements of counsel on appeal or in a motion are not evidence and thus are not entitled to any evidentiary weight. See *INS v. Phinpathya*, 464 U.S. 183, 188-89 n.6 (1984); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503 (BIA 1980). Counsel

does not submit any new facts that are supported by affidavits or other documentary evidence, and thus the applicant has not satisfied the requirements for a motion to reopen.

ORDER: The motion is dismissed.